

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CALVIN W. SCOTT and DEPARTMENT OF THE NAVY,  
NAVY PUBLIC WORKS CENTER, San Diego, Calif.

*Docket No. 96-2298; Submitted on the Record;  
Issued October 16, 1998*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly refused to reopen appellant's case for further review of the merits of his claim.

The only Office decision before the Board on this appeal is the Office's September 11, 1995 decision finding that appellant's application for review was not sufficient to warrant review of its prior decision. Appellant appealed the Office's most recent merit decision issued on January 19, 1994 to the Board, which affirmed this decision in a decision and order dated April 24, 1995. In this decision and order, the Board found that the Office had established that appellant's disability causally related to his February 18, 1981 employment injury ended by February 6, 1994.<sup>1</sup> As the only Office decision issued subsequent to the Board's April 24, 1995 decision and order is the Office's September 11, 1995 decision finding that appellant's application for review was not sufficient to warrant review of its prior decision, the Board lacks jurisdiction to review the merits of appellant's claim.<sup>2</sup>

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits of his claim.

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<sup>1</sup> Docket No. 94-1305.

<sup>2</sup> 20 C.F.R. § 501.3(d)(2) requires that an application for review by the Board be filed within one year of the date of the Office's final decision being appealed.

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

"The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may--

(1) end, decrease, or increase the compensation awarded; or

(2) award compensation previously refused or discontinued."

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a point of law, by advancing a point of law or fact not previously considered by the Office, or by submitting relevant and pertinent evidence not previously considered by the Office. Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements the Office will deny the application for review without reviewing the merits of the claim.

In his undated request for reconsideration that was received by the Office on August 18, 1995, appellant stated that his neck continued to swell up because of his employment injury and that it had caused a cerebral vascular accident. Appellant did not submit any evidence with this request for reconsideration. His request does not meet any of the criteria set forth in 20 C.F.R. § 10.138(b)(1): it does not show that the Office erroneously applied or interpreted a point of law, it does not advance a point of law or fact not previously considered by the Office, and it was not accompanied by relevant and pertinent evidence not previously considered by the Office. The termination of appellant's compensation was based on the weight of the medical evidence, and appellant's opinion that his condition has not resolved is of little probative value.

The decision of the Office of Workers' Compensation Programs dated September 11, 1995 is affirmed.

Dated, Washington, D.C.  
October 16, 1998

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member